IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 24370 of 2007(A)

OA.1158/1999 of DEBT RECOVERY TRIBUNAL, ERNAKULAM

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PETITIONER:

P.F.SCARIA, S/O.FRANCIS,
KIZHAKKE PUNNOOR HOUSE,
PULINKUNNU P.O., ALAPPUZHA DISTRICT.

BY ADV. SRI.KKM.SHERIF
SRI.P.M.KUNJIMOIDEENKUTTY
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SMT.SHEENA SAMUEL

RESPONDENTS:

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1. THE CANARA BANK, PULINKUNNU BRANCH,
ALAPPUZHA RPRESENTED BY ITS MANAGER.

2. THE RECOVERY OFFICER,
DEBT RECOVERY TRIBUNAL FOR KERALA AND
LAKSHADWEEP, ERNAKULAM.

3. M/S.MATHA MODERN RICE MILLS,
ONNAMKARA, THEKKEKARA P.O.,
ALAPPUZHA, REPRESENTED BY ITS
MANAGING PARTNER.

ADDL. RESPONDENTS:

4. NEDUMUDY VILLAGE SERVICE CO-OPERATIVE SOCIETY
LTD. NO.2331, ALAPPUZHA, REP. BY ITS SECRETARY.

5. THE KERALA FINANCIAL CORPORATION,
ALAPPUZHA BRANCH, ALAPPUZHA,
REP. BY ITS MANAGER.

(ADDL. 4TH AND 5TH RESPONDENTS ARE IMPLEADED AS
PER ORDER DT.13.8.2007 IN IA NO.11115/2007.)

R1 BY ADV. SRI.GOPINATH MENON, SC
R2 BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR
R4 BY ADV. SRI.P.B.ASOKAN
R5 BY ADV. SRI.V.B.UNNIRAJ, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE ORDER DT.28.10.05.

P2: TRUE COPY OF NOTICE DT.1.8.2006.

P3: TRUE COPY OF NOTICE DT.14.2.07.

P4: TRUE COPY OF OBJECTION DT.7.3.07.

P5: TRUE COPY OF THE SALE PROCLAMATION DT.18.7.07.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.24370 of 2007

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Dated this the 4th day of September, 2007.

JUDGMENT

Heard counsel for the petitioner and counsel for respondents 1,4 and 5. Recovery proceedings are in progress for recovery of arrears due to first respondent-Bank. Petitioner's case is that petitioner is only a guarantor and the two items of petitioner's properties notified for sale namely, items C and D in the schedule are only 10 cents of land, whereas the two items of properties of the defaulter account for around 1.4 acres with rice mill. One item of property is already sold for around Rs.20 lakhs and the balance arrears is around Rs.27 lakhs. The third respondent is in arrears of around Rs.1.5 lakhs to KFC also. Since the petitioner's prayer was only to direct sale of defaulter's property first, to try to save petitioner's property if possible, this court vide order dated 23.8.2007 directed sale of defaulter's property. Standing Counsel for first respondent-Bank submitted that proclamation of sale will be settled on 3.10.2007. Since the balance arrears after reckoning the amount received pursuant to sale already made is below Rs.30 lakhs and since petitioner's properties together is only 10 cents, I direct the second respondent to first notify for sale the properties of the

defaulter namely, schedule items A and E and proceed with sale of such properties. If such sales proceeds are sufficient to settle liability due to the first respondent-Bank and the KFC, then there is no need to proceed with sale of petitioner's property. However, if the said sale proceeds are inadequate, then second respondent will proceed for sale of petitioner's property also. Since petitioner has stake in the matter, petitioner can also give publicity and arrange purchasers or even participate in sale of the defaulter's property.

The W.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms